

Appeal from decision of the Montana State Office, Bureau of Land Management, rejecting appellants' over-the-counter oil and gas lease offer M-46679.

Set aside and remanded.

1. Oil and Gas Leases: Generally -- Oil and Gas Leases: Stipulations

The Secretary of the Interior has the discretionary authority to require the execution of special stipulations as a condition precedent to issuance of oil and gas leases for land which is located in a national forest in order to protect environmental and other land use values. In the exercise of that authority BLM may establish a reasonable time limit of 30 days from receipt of notice for an over-the-counter lease offeror to submit a signed lease with the required stipulations. Where the offeror does not object to the stipulations, and files them with BLM in advance of a decision rejecting the offer but after the 30-day period allowed for filing, BLM should consider whether the late filing ought not be accepted under the provisions of 43 CFR 1821.2-2(g).

APPEARANCES: Kelley S. Thomas, Esq., Midland, Texas, for appellants.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

Bill Mathis, J. L. Davis, and Joyce H. Gillis have appealed from a decision of the Montana State Office, Bureau of Land Management (BLM), dated May 24, 1984, rejecting their over-the-counter oil and gas lease offer for failure to timely file signed special stipulations.

The record shows that BLM issued a notice dated March 22, 1984, informing appellants that it was prepared to issue a lease for their oil and gas lease offer M-46679 if they signed and returned the enclosed stipulations. The notice stated:

The surface managing agency has determined a lease may be issued for all or part of the lands in your offer(s) subject to the special stipulations which are enclosed. All copies must be

signed, dated and filed in this office before a lease can be issued.

Failure to date, sign and file the stipulations in this office within 30 days from the day you receive this Notice will result in rejection of your offer(s). [Emphasis added.]

The return receipt card in the record shows that appellants received this notice with the stipulations on March 26, 1984. The signed stipulations were subsequently received by BLM on May 7, 1984. BLM then issued its May 24 decision rejecting the lease offer in its entirety because the stipulations were not signed and timely returned as required by the March 22, 1984, notice. Appellants allege that the stipulations were mailed far in advance of their receipt by BLM, stating:

Mathis and Gillis signed the stipulations March 27, 1984 and forwarded them to Davis for signing and mailing on to the Bureau of Land Management. The documents were signed by Davis and were mailed April 3, 1984. The stipulations were due April 26, 1984 but were stamped received by the Bureau of Land Management May 7, 1984. 1/

Statement of Reasons at 1-2.

Appellants point out that there is no regulation specifically pertaining to the timely receipt of stipulations before issuance of an over-the-counter lease. They also assert that the term "file" as used by BLM in its letter transmitting the stipulations for appellants' signatures is ambiguous as to whether actual receipt within the 30-day deadline is required. They further contend that the late receipt of the stipulations should be excused

1/ BLM did not retain the envelope in which the stipulations were delivered. Thus, the record is far from clear that appellants actually mailed the signed stipulations to BLM well in advance of the due date of Apr. 26, 1984, as alleged. A handwritten note in the case file, dated June 6, 1984, reflects that David Davis of Midland, Texas, telephoned BLM regarding its rejection of the lease offer and was told "his only avenue is to appeal through IBLA." The note then states: "They show they mailed the stips 4-30-84 and we received them 5-7-84." Appellants include two affidavits with their statement of reasons concerning the mailing of the stipulations but neither of these states with certitude that the signed stipulations were mailed to BLM on Apr. 3, 1984, as appellants otherwise intimate. Thus, Susan Majors, mail room clerk and secretary for J. L. Davis, states: "I processed the mail on April 3, 1984. I know the stipulation was mailed on that date because no mail has been found or lost in our mail room * * *. It is my opinion that the stipulations were mailed on April 3, 1984 using our normal procedures." Gary A. Stain, an accountant for J. L. Davis responsible for handling the stipulations, avers that his records "show that the documents were in the mail room on April 3, 1984." His affidavit also concludes, "It is my opinion that the stipulations were mailed April 3, 1984, using our normal procedures."

under 43 CFR 1821.2-2(g) because the criteria set forth in that regulation do not prevent BLM from considering the documents as timely filed.

[1] First, it is well settled that the Secretary of the Interior has the discretionary authority to require the execution of special stipulations as a condition precedent to issuance of oil and gas leases for land which is located in a national forest in order to protect environmental and other land use values. James M. Chudnow, 78 IBLA 317 (1984); James M. Chudnow, 62 IBLA 16 (1982). The exercise of that authority necessarily includes the ability of BLM to establish reasonable time limits for a lease offeror to submit the signed lease and stipulations. A 30-day time limit for filing stipulations (or objecting thereto where they amount to additional terms not previously reviewed by the offeror) has been previously considered and approved by the Board. Harry K. Veal, 73 IBLA 86 (1983); Fortune Oil Co., 71 IBLA 153 (1983); Emery Energy, Inc. (On Reconsideration), 67 IBLA 260 (1982). Generally, in simultaneous lease offer situations the Board has held that failure to return special stipulations required by BLM as a condition precedent to issuance of a noncompetitive oil and gas lease within the allotted time properly results in rejection of the lease offer. Arthur Ancowitz, 53 IBLA 69 (1981); J. Thomas Lewis, 50 IBLA 350 (1980). Where simultaneous drawings are involved the intervening rights of third party drawees preclude consideration of late-filed stipulations.

In this case, however, appellants' offer was filed over-the-counter. Moreover, appellants filed the stipulations 17 days before BLM issued its decision rejecting their lease offer. Under these circumstances we find that BLM properly should have received the late filing of stipulations as authorized by 43 CFR 1821.2-2(g), which provides:

(g) When the regulations of this chapter provide that a document must be filed or a payment made within a specified period of time, the filing of the document or the making of payment after the expiration of that period will not prevent the authorized officer from considering the document as being timely filed or the payment as being timely made except where:

- (1) The law does not permit him to do so.
- (2) The rights of a third party or parties have intervened.
- (3) The authorized officer determines that further consideration of the documents or acceptance of the payment would unduly interfere with the orderly conduct of business.

From our review there appears no reason to prevent application of the above regulation to this case. 2/ Appellants never objected to the substance

2/ 43 CFR 1821.2-2(g) technically applies to filing requirements set by regulation. Inasmuch as Departmental policy allows the waiver of filing deadlines set by regulation under certain circumstances, it would be incongruous to hold that such policy should not apply with equal force to deadlines set by correspondence, as here.

of the stipulations and BLM has not denied their claims that they attempted to make timely compliance with the BLM notice. There is nothing in the law to preclude acceptance of the late filing, nor does it appear the rights of third parties intervened prior to appellants' submission. Further, we perceive no reason why additional consideration of appellants' offer as supplemented would interfere with the efficient and orderly administration of the public lands. This case is distinguishable from Gian R. Cassarino, 78 IBLA 242 (1984), where the Board discussed at length the limitations on curing of defects in noncompetitive over-the-counter offers by supplemental filings. In Cassarino we held that offers may no longer be "resuscitated with new priority by the submission of 'curative' material after those offers have been properly rejected by BLM." (Emphasis in original.) We further stated, however: "Such defective offers may still be cured before their rejection by BLM, with priority as of the date and time of their perfection." Id. at 247. (Emphasis in original.)

Since appellants' stipulations were filed prior to the BLM decision rejecting their offer (although after the 30-day period administratively set for receipt of the signed stipulations), the rationale in Cassarino supports acceptance of the late filing to perfect the lease offer as of May 7, 1984, with priority as of that date.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of Interior, 43 CFR 4.1, the decision appealed from is set aside and the case remanded to the Montana State Office to further consider appellants' lease offer as supplemented.

Wm. Philip Horton
Chief Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Gail M. Frazier
Administrative Judge

